

CITY OF ALAMEDA RESOLUTION NO. _____

AMENDING THE CITY OF ALAMEDA'S EMPLOYER/EMPLOYEE
RELATIONS RESOLUTION AND SUPERSEDING THE
FOLLOWING RESOLUTIONS: 7476, 7477, 7684 AND 14894.

WHEREAS, Chapter 10, Division 4, Title 1 of the Government Code of the State of California was amended effective January 1, 1969, for the purpose of promoting improved employer-employee relations between public employers and their employees by establishing uniform and orderly methods of communication between employees and the public agencies by which they are employed; and

WHEREAS, Government Code Section 3507 empowers a City to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of employer-employee relations; and

WHEREAS, the City of Alameda passed and adopted Resolution No. 7476 on May 20, 1969 establishing procedures for administration of employer-employee relations between the City and its employee organizations; and

WHEREAS, the City of Alameda passed and adopted Resolution No. 7477 on May 20, 1969 establishing procedures for administration of employer-employee relations between the City and its employee organizations; and

WHEREAS, the City of Alameda passed and adopted Resolution No. 7684 on October 20, 1970 amending Resolution No. 7477; and

WHEREAS, the City of Alameda passed and adopted Resolution No. 14984 on February 18, 2014 amending Resolution No. 7477; and

WHEREAS, the City of Alameda desires to adopt such reasonable rules and regulations as authorized by law.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Alameda that said Council hereby approves adoption of a resolution amending the Employer/Employee Relations Ordinance and superseding the following resolutions: 7476, 7477, 7684 and 14894 as is more specifically delineated in Exhibit A which is attached hereto and incorporated by reference.

EMPLOYER-EMPLOYEE RELATIONS RESOLUTION

ARTICLE I. GENERAL PROVISIONS

Section 1. TITLE:

This Resolution shall be known as the “Employer-Employee Relations Resolution of the City of Alameda.”

Section 2. STATEMENT OF PURPOSE

The purpose of this Resolution is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 and following) captioned “Local Public Employee Organizations,” by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations and for resolving disputes regarding wages, hours, and other terms and conditions of employment. However, nothing contained herein shall be deemed to supersede the provisions of applicable federal or state law, the Alameda City Charter, ordinances, resolutions and rules which establish and regulate the civil service system, or which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen the civil service system and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of operations; determine the methods, means and personnel by which operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

It is not the purpose of this Resolution to infringe of the rights of employees to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, including but not limited to wages, hours and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employees organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, restrained, coerced or discriminated against because of his or her exercise of these rights.

Section 3. DEFINITIONS

As used in this Resolution, the following terms shall have the meanings indicated:

- (A) APPROPRIATE UNIT or UNIT -- means a unit of job classifications or positions established pursuant to Section 10 of this Resolution.
- (B) CITY -- means the City of Alameda, a municipal corporation, and where appropriate herein, "City" refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.
- (C) - CONFIDENTIAL EMPLOYEE - means an employee who, in the course and scope of his or her duties, has access to confidential information relating to the City's administration of employer-employee relations. Confidential employees for purposes of this employer employee relations resolution are distinguished from those employees who may be referred to as "confidential" within the City because they have access to private employee personnel or financial information or who have access to information that has been deemed confidential that is unrelated to the administration of employer-employee relations.
- (D) CONSULT OR CONSULTATION IN GOOD FAITH – means to communicate orally or in writing with an affected recognized employee organization for the purpose of presenting and obtaining views or advising of proposed actions in a good faith effort to reach a consensus.
- (E) DAY – means calendar day unless expressly stated otherwise.
- (F) EMPLOYEE -- means any person employed by the City. The term "employee" does not include those persons elected by popular vote.
- (G) EMPLOYEE RELATIONS OFFICERS – means the City Manager or his or her duly authorized representative.
- (H) EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION – means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees.
- (I) FACT-FINDING – means the process contained in Government Code sections 3505.4 and 3505.5 whereby a three-member panel, one appointed by the City, one appointed by the recognized employee organization, and one selected by the Public Employment Relations Board (PERB) or appointed by mutual agreement of the City and the recognized employee organization, make findings of fact and recommend terms for resolving an impasse to the parties.

- (J) INTEREST ARBITRATION – means the process provided for in Alameda City Charter Article XXVII.
- (K) IMPASSE -- means that representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their difference on matters on which they are required to meet and confer remain so substantial and prolonged that further meeting and conferring would be futile.
- (L) MANAGEMENT EMPLOYEE – means an employee having significant responsibility for formulating, administering or managing the implementation of City policies and programs.
- (M) MEET AND CONFER IN GOOD FAITH – means the process contained in Government Code section 3505 by which duly authorized City representatives and duly authorized representatives of a recognized employee organization have a mutual obligation to personally meet and confer promptly upon request by either party and in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.
- (N) PROOF OF EMPLOYEE SUPPORT – means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words “recently signed” shall mean within sixty (60) days prior to the filing of a petition.
- (O) RECOGNIZED EMPLOYEE ORGANIZATION – means an employee organization which has been formally acknowledged by the City as an employee organization that represents employees of the City.
- (P) SCOPE OF REPRESENTATION -- means all matters relating to employment and working conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation does not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.
- (Q) SUPERVISORY EMPLOYEE – means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge,

assign, reward, or discipline other employees or responsibility to direct them, or to adjust their grievances, or evaluate their performance, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

ARTICLE II – REPRESENTATION PROCEEDINGS

Section 4. FILING OF PETITION FOR EXCLUSIVE RECOGNITION BY EMPLOYEE ORGANIZATION

An employee organization which seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documents:

1. Name and address of the employee organization.
2. Names and titles of its officers.
3. Names or employee organization representatives who are authorized to speak on behalf of its members.
4. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.
5. A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
6. The employee organization's constitution and by-laws.
7. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
8. A statement that the employee organization has no restriction on membership based on race, color, creed, religion, sex, national origin, age, sexual orientation, mental or physical disability or medical condition.
9. The job classifications of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
10. A statement that the employee organization has in its possession written proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
11. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury by the duly authorized officer(s) of the employee organization executing it.

Section 5. CITY RESPONSE TO RECOGNITION PETITION

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

1. There has been compliance with the requirements of the Recognition Petition, and
2. The proposed representation unit is an appropriate unit in accordance with Section 10 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing.

The petitioning employee organization may appeal such determination in accordance with Section 13 of this Resolution.

Section 6. OPEN PERIOD FOR FILING CHALLENGING PETITION

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 4 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 10 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 13 of this Article II.

Section 7. GRANTING EXCLUSIVE RECOGNITION WITHOUT AN ELECTION

If the proof of support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the Exclusively

Recognized Employee Organization for the designated unit. If the neutral third party does not make an affirmative determination, then an election may be scheduled in accordance with Section 8 below.

Section 8. ELECTION PROCEDURE

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with such party's rules and procedures subject to the provisions of this Resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regularly filled positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a neutral third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

Section 9. PROCEDURE FOR DECERTIFICATION OF EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit shall be filed with the Employee Relations Officer only once in a 12 month period and not within 90 days of the expiration of the contract, after one full year of recognition of the incumbent Exclusively Recognized Employee Organization; A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

1. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
2. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
3. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
4. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section 9.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section 9 in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information required under paragraph 3 of this Section 9, and otherwise conforms to the requirements of Section 9 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 13 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 8 of this Article II.

During the “open period” specified in the first paragraph of this Section 9, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may

within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section 9, which the Employee Relations Officer shall act on in accordance with this Section 9.

If, pursuant to this Section 9, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

Section 10. POLICY AND STANDARD FOR DETERMINATION OF APPROPRIATE UNITS

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on: (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Units may be established on any craft, functional, departmental or other basis so as to assure to employees the fullest freedom in exercising the rights set forth herein. The following factors, among others, shall be considered in making such determination, not necessarily in the order listed:

1. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
2. The history of representation in the City and in similar public agencies; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
3. Consistency with the organizational patterns of the City.
4. Effect of differing legally mandated impasse resolution procedures.
5. Number of employees and classifications, and the effect on the administration of employer-employee relations created by fragmentation of classifications and proliferation of units.
6. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this Section 10, professional employees shall not be denied the right to be represented separately from non-professional employees.

Notwithstanding the foregoing provisions of this Section 10, the confidential, management or supervisory status of a group of employees is crucial for purposes of City operations and, accordingly, is a determinative factor in the assessment of community of interest facts. Confidential Employees, Management Employees or Supervisory Employees, as defined in Section 3, may be confined to bargaining units consisting solely of Confidential Employees,

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Management Employees or Supervisory Employees, respectively.

Peace Officers may be required to be represented in separate units composed solely of such peace officers. These units shall not be represented by an organization that, directly or indirectly, is subordinate to any other employee organization which includes non-peace officers.

The Employee Relations Officer shall, after notice to and consultation in good faith with affected employee organizations, allocate new classifications or positions to a unit, delete eliminated classifications or positions from a unit, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section 10.

Section 11. PROCEDURE FOR MODIFICATION OF ESTABLISHED APPROPRIATE UNITS

Requests by employee organizations for modifications of established appropriate units may be filed with the Employee Relations Officer only once in a 12 month period and not within 90 days of the expiration of the contract. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 4 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 10 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may by his/her own motion propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 10 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 13 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 4 hereof.

Section 12. PROCEDURE FOR PROCESSING SEVERANCE REQUESTS

An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. The timing, form and processing of such request to sever shall be as specified in Section 11 for modification requests.

Section 13. APPEALS

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer; or an employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Section 4), Challenging Petition (Section 6),

Decertification Petition (Section 9), Unit Modification Petition (Section 11), or Severance Request (Section 12) -- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Section 9) or Severance Request (Section 12) -- has not been filed in compliance with the applicable provisions of this Article, may, within ten (10) days of notice of the Employee Relations Officer's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of mediation proceedings, whichever is later.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within sixty (60) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final.

ARTICLE III – ADMINISTRATION

Section 14. SUBMISSION OF CURRENT INFORMATION BY RECOGNIZED EMPLOYEE ORGANIZATION

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items 1 through 11 of its Recognized Petition under Section 4 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Section 15. EMPLOYEE ORGANIZATION ACTIVITIES – USE OF CITY RESOURCES

Reasonable access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures of the City, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal employee organization business such as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

The City shall provide reasonable released time for a reasonable number of representatives of the exclusively recognized employee organization for purposes of meeting and conferring with City Representatives and processing grievances, provided, that time off shall be arranged in advance by the Employee Relations Officer.

Section 16. ADMINISTRATIVE RULES AND PROCEDURES

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

ARTICLE IV – MEET AND CONFER AND IMPASSE PROCEDURES

Section 17. MEET AND CONFER IN GOOD FAITH - SCOPE

The City, through its representatives, shall meet and confer in good faith as defined in Section 3 of this Resolution. If the parties are unable to reach agreement on a matter within the scope of representation, then either party may initiate impasse procedures as set forth in Section 18 below.

Section 18. INITIATION OF IMPASSE PROCEDURES

If the meet and confer process has reached impasse as defined in Section 3 of this Resolution, either party may request the initiation of impasse procedures. The party initiating impasse procedures must send written notice containing the following information: (1) a list of all issues in dispute; (2) the party's position regarding each issue; (3) a written description containing the party's last offer on each issue; and (4) a list of all issues on which there is a tentative agreement.

After notice of impasse is sent, the employee relations officer will promptly schedule a meeting. The purpose of such impasse meeting shall be: (1) to review the position of all parties in a final effort to reach agreement on a Memorandum of Understanding; and (2) if the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Section 19. IMPASSE PROCEDURES

Unless otherwise in conflict with procedures impasse procedures are as follows:

A. MEDIATION:

If an impasse meeting does not resolve the dispute between the parties, both parties may agree to participate in mediation. The costs of mediation shall be borne equally. Mediation shall be conducted by a mutually agreed upon mediator, or a mediator supplied by the California State Mediation and Conciliation Service. Prior to the mediation, each party will submit to the mediator a statement of its position on all issues. This statement may be the same in the same form as the notice of impasse.

All mediation proceedings shall be private and confidential. The mediator shall make no public recommendations, nor take any public position at any time concerning the issues.

B. FACT-FINDING:

If after the impasse meeting, the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation, the exclusively recognized employee organization may request that the parties' dispute be submitted to a fact-finding panel consistent with Government Code section 3505.4 and 3505.5 or successor thereto. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such request may be filled:

1. Not sooner than thirty (30) days, but no more than forty-five (45) days, following the appointment or selection of a mediator under this Section 18; or
2. If the dispute was not submitted to mediation, not later than thirty (30) days following the date the party provided the other written notice of a declaration of impasse.

Within five (5) days after receipt of the written request, each party shall select a person to serve as its member of the fact-finding panel. Within five (5) days after the selection of panel members by the parties, PERB shall be asked to select a chairperson of the fact-finding panel. Within five (5) days after PERB selects a chairperson, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by PERB.

Within ten (10) days of its appointment, the panel shall meet with the parties or their representatives, either jointly or separately, and make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. All fact finding panel procedures and any findings and recommendations by the fact finding panel shall comply with the requirements of Government Code sections 3505.4 and 3505.5. The recommendations of the fact-finding panel are advisory only.

Fact-finding is not available to any unit that can request compulsory arbitration under the City Charter.

C. DETERMINATION BY THE CITY COUNCIL:

If the parties did not agree to submit the dispute to mediation or if the dispute was not resolved in mediation and fact-finding was not requested, the City Council may, after holding a public hearing regarding the impasse, implement by Resolution its last, best and final offer but shall not implement a memorandum of understanding.

If fact-finding is requested and the dispute remains unresolved, then no earlier than ten (10) days after the fact finders' written findings and advisory recommendations have been submitted to the parties, the City Council may, after holding a public hearing regarding the impasse, implement by Resolution its last, best and final offer but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, as required by law.

Any legislative action by the City Council on the impasse shall be binding.

D. COSTS OF IMPASSE PROCEDURES:

The cost for the services of a mediator and/or chairperson of a fact-finding panel utilized by the parties, and any other mutually incurred costs of mediation and/or fact-finding, shall be borne equally by the City and by the employee organization or employee organizations. The cost

for the fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by that party.

ARTICLE V – MISCELLANEOUS PROVISIONS

Section 20. CONSTRUCTION

This Resolution shall be administered and construed as follows:

1. Nothing in this Resolution shall be construed to deny any person, employee, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or state laws or City Charter.
2. This Resolution shall be interpreted so as to carry out its purpose as set forth in Article I.
3. Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under City law or contract.

Section 21. SEVERABILITY

If any provision of this Resolution, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. .

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 19th day of January 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 20th day of January 2021.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda